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**RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3641**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

For: METHOD TO CONTROL REACTIONS
INVOLVING ISOTOPIC FUEL
WITHIN A MATERIAL USING
ORTHOGONAL ELECTRIC-FIELDS

Serial no. 09/ 748,691 09/748,691

Filed: 12/26/2000

This is a division of Serial no. 07/ 760,970

Filed: 09/17/1991

Group Art Unit: 3641
Examiner: Palabrica, R.J.

October 10, 2005

The Commissioner for Patents
Alexandria, VA 22313-14501

**PETITION TO THE COMMISSIONER
PURSUANT TO 37 C.F.R. 1.181**

1. This Petition is made pursuant to 37 C.F.R. 1.181 to the Commissioner of Patents, and is made to invoke his supervisory authority to correct a wrongful situation involving a "Notice Of Abandonment" [Exhibit "A" attached, hereinafter "Notice"] dated 9/14/2005. Pursuant to 37 C.F.R. 1.181, there is no fee. This Petition is reasonable based upon the reasons stated below, including that the date-stamp of the Office demonstrates that there was no abandonment [Exhibits "B", "C" and "D", attached], and the facts as discussed in the Declaration supporting this Petition.

2. In the discussion below, reference is made to Declaration of Dr. Mitchell Swartz (hereinafter called the "Swartz Declaration") dated October 10, 2005.

3. As discussed in the Swartz Declaration, Applicant received a "Notice Of Abandonment" [Exhibit "A" attached, hereinafter "Notice"] dated 8/11/2005. Said communication is a Notice which states that the application has been "Abandoned". There is a major error in said communication from the Office. As stated in the Swartz Declaration,

"This Applicant has NEVER abandoned this patent application. First, no communication to the Office from the Applicant has ever used the word "abandonment". Second, there have been three responses -- including timely submitted Declarations-- to which there has NEVER been a reply."

4. Said Responses and Declatations were received at the Patent and Trademark Office BOTH on January 28, 2004 (Exhibit "C", attached) AND February 3, 2005 (Exhibits "B" and "D", attached). As stated in the Swartz Declaration,

"The datestamps of the Patent and Trademark Office (Exhibits "B", "C" and "D", attached) indicates that pleadings with Exhibits AND Declarations were received and docketed on January 28, 2003 through February 3, 2004."

6. Said Response included a Petition to the Commissioner supported by an Affidavit. All three pleadings were received as proven by the Office's datestamps (Exhibit "B" and "C", attached). As stated in the Swartz Declaration,

"Submitted as the Response (Exhibit "B") was a Petition to the Commissioner under 1.181, accompanied by a supporting Declaration. These additional important pleadings were received at the Patent and Trademark Office as proven by the Office's datestamps (Exhibits "B", "C" and "D")."

Said datestamps of the Patent and Trademark Office [Exhibits "B", "C" and "D"] herald and prove receipt of Applicant's Responses to the Office's Action --- and this indelibly demonstrates that there was no abandonment. There may be disingenuity and impropriety at the Patent Office BUT there has been no abandonment by the Applicant (now Appellant)."

NOTA BENE: It is obvious the application was never abandoned because the Appellant has continued to submit pleadings, and entered a Petition to the Commissioner supported by a Declaration -- which the Examiner has removed from the file AFTER RECEIPT AS CONFIRMED BY THE STAMP OF THE HONORABLE POSTOFFICE.

7. Said pleadings have simply been ignored by someone at the Office or removed from the file, who thereafter falsely checked off, "No reply has been received". In fact, someone at the Office knew that there was a Petition to the Commissioner in the file because it was received and acted upon.

Someone at the Office knew there was a Response because the Response was received (Exhibits "B", "C" and "D"). Attention of the Commissioner and the court are directed to the obvious fact that once again, someone at the Office has spoliated submitted evidence to egregiously and systematically hurt the Applicant's application.

9. This Petition to reverse the Abandonment of the present invention is reasonable and should be granted because of any of the following reasons.

- A The date-stamps of the Office [Exhibits "B", "C" and "D" absolutely positively demonstrate receipt] **proves that there was no abandonment.**
- B Someone at the Officer has on more than one occasion removed papers from Applicant's file(s), and this was reported to the Federal Court but has been continued in defiance by the Office. In the present case, someone has removed or ignored the Responses -- which were received [Exhibits "B", "C" and "D"]. This is spoliation of Office (federal) files.
- C The U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

10. For the above reasons, documented by the record, supported by the Law, and consistent with the date-stamps of the Office which indelibly prove that Applicant filed responses in a timely fashion with Declarations and Exhibits -- and

which were received [confer Exhibits "B", "C" and "D"]--, therefore it is reasonably and respectfully requested that

A: The Commissioner should use supervisory authority to immediately activate and revive the above-entitled application based upon the Evidence that it was not so 'abandoned'.

B: Furthermore, the Commissioner in this prism the Office should cease and desist spoliating the previously-submitted Evidence or Mr. Kraus and the Commissioner MUST accept additional responsibility for said destruction of Evidence under the doctrine of *respondeat superior*.

C: The Applicant requests copies of the Docket immediately.

D: So that the appearance of impropriety in this matter by the Examiner and the Office may be minimized, the Commissioner should apply Sanctions to the Examiner and his Supervisor for again "abandoning" an application which was never abandoned -- and then recuse them.

Respectfully submitted,



Mitchell Swartz, ScD, MD, EE
Post Office Box 81135
Wellesley Hills, Mass. 02481

Certificate Of Mailing [37 CFR 1.8(a)]

October 10, 2005

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to
The Commissioner for Patents
Alexandria, VA 22313-14501
on the date below.

Thank you.

Sincerely,

October 10, 2005



M.R. Swartz



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/748,691 | 12/26/2000 | Mitchell R. Swartz | | 4269 |

7590 08/11/2005
Mitchell R. Swartz, ScD, MD, EE
16 Pembroke Road
Weston, MA 02493

EXAMINER
PALABRICA, RICARDO J

ART UNIT 3663
PAPER NUMBER

DATE MAILED: 08/11/2005

EXHIBIT "A" ↗

Please find below and/or attached an Office communication concerning this application or proceeding.

The date stamp of the United States Patent Office
on this postcard will indicate receipt of:

1. "Petition To The Commissioner",
with a Certificate of mailing
on the last page thereof, and
2. Declaration of Dr. Mitchell Swartz
3. This self-addressed stamped postcard.

S.N. 09/748,691 Filed: 12/26/2000

Thank you. Mailed: 1/28/2004 Dr. M. Swartz



EXHIBIT "B" →

EXHIBIT "C" ↓

The date stamp of the Board of Patent Appeals
on this postcard will indicate receipt of:

1. "Appellant's Notice To The Board
Of False Statements In An Office Communication
with a Certificate of mailing
on the last page thereof, and
2. Declaration of Dr. Mitchell Swartz, and
3. This self-addressed stamped postcard.

S.N. 09/748,691 Filed: 12/26/2000

Thank you.

Mailed: January 28, 2004 Dr. M. Swartz

EXHIBIT "D" ↓

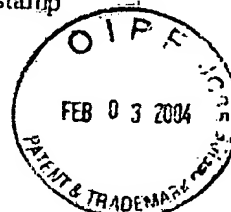
The date stamp of the Board Of Patent Appeals
on this postcard will indicate receipt of:

- 1) Appellant's Appeal Brief (in triplicate),
- 2) containing a Certificate of Service on the last page,
- 3) Appellant's Appendix attached thereto,
- 4) Appellant's Certificate Of Mailing,
- 5) This Self-addressed postcard for the date stamp
of the Board Of Patent Appeals

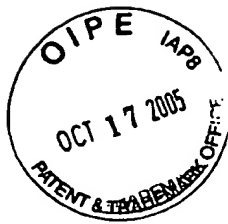
Thank you. Dr. Mitchell R. Swartz

Mailed January 28, 2004

Serial no. 09/748,691



BEST AVAILABLE COPY



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**DECLARATION OF DR. MITCHELL SWARTZ
SUPPORTING PETITION TO THE COMMISSIONER**

I, Mitchell R. Swartz, declare that I am a citizen of the United States of America and the inventor of the invention described in the above-entitled application.

1. This Applicant has NEVER abandoned this patent application. First, no communication to the Office from the Applicant has ever used the word "abandonment". Second, there have been three responses -- including timely submitted Declarations-- to which there has NEVER been a reply.

2. Submitted as the Response (Exhibit "B") was a Petition to the Commissioner under 1.181, accompanied by a supporting Declaration. These additional important pleadings were received at the Patent and Trademark Office as proven by the Office's datestamps (Exhibits "B", "C" and "D").

3. Said datestamps of the Patent and Trademark Office [Exhibits "B", "C" and "D"] herald and prove receipt of Applicant's Responses to the Office's Action --- and this indelibly demonstrates that there was no abandonment. The datestamps of the Patent and Trademark Office (Exhibits "B", "C" and "D", attached) indicates that pleadings with Exhibits AND Declarations were received and docketed on January 28, 2003 through February 3, 2004.

4. Given the admission by the Office of three more incidents involving failure to docket or demonstrating more spoliation of Declarations of Affiants duly submitted, there may be disingenuity and impropriety at the Patent Office BUT there has been no abandonment by the Applicant (now Appellant).

Respectfully,



Mitchell Swartz, ScD, MD, EE
Post Office Box 81135
Wellesley Hills, Mass. 02481

I declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Signature of Inventor:

October 10, 2005



Mitchell R. Swartz, ScD, MD, EE
Post Office Box 81135
Wellesley Hills, Mass. 02481